

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

MATTHEW A. BEATON
Secretary

JOHN LEBEAUX
Commissioner

AGRICULTURAL PRESERVATION RESTRICTION PROGRAM GUIDELINES **REQUESTS FOR A CERTIFICATE OF APPROVAL TO CONSTRUCT A RENEWABLE ENERGY SYSTEM**

- I. **PURPOSE:** By obtaining an Agricultural Preservation Restriction ("APR"), it has been and remains the intent of the Commonwealth of Massachusetts to perpetually protect and preserve agricultural lands, to encourage sound soil management practices in accordance with generally accepted agricultural practices, to preserve natural resources, to maintain land in active commercial agricultural use, and to ensure resale of an APR at an agriculturally affordable price for future agricultural use. An APR prohibits activities or uses which may be detrimental to: the actual or potential agricultural viability of an APR, water or soil conservation; good agricultural practices; and activities or uses which may be wasteful of the natural resources of the Commonwealth.
- II. **AUTHORITY:** At the Department's discretion, the department may grant a Certificate of Approval ("COA") to construct an agriculturally related Renewable Energy System ("RES") on the Premises.
- III. **DEPARTMENTAL PREREQUISITES TO ISSUING A COA FOR A RENEWABLE ENERGY SYSTEM:** In order to grant a COA for a Renewable Energy System, the Department must find all of the following:
1. The APR contains language requiring the Owner to petition the Department for approval to construct an agricultural structure;
 2. The Premises is being utilized for commercial agriculture to the fullest extent possible. Therefore, a majority of open productive agricultural land must be in commercial Agricultural Use;
 3. The Renewable Energy System will enhance the Owner's commercial Agriculture Operation or will enhance the Premises' agricultural productivity;
 4. The Renewable Energy System will improve the economic viability of the Premises or Agricultural Operations;
 5. Non-contiguous APR land or non-APR land owned by the same entity and to be served by the output of the Renewable Energy System must also have a De-commissioning Plan. The Department reserves the right to require implementation of the plan upon the severing of ownership of the agricultural operations served by the Renewable Energy System;
 6. The Renewable Energy System will be located so as to minimize negative impacts to the agricultural productivity of the Premises;
 7. The Applicant has submitted to the Department a detailed site plan showing where the proposed Renewable Energy System will be located on the Premises and where any existing structures and improvements are currently located; and,

8. The Renewable Energy System must have either a rated annual output capacity (kWh or BTUs) not greater than 2.0 times the documented historical or projected annual agricultural energy (kWh or BTUs) use on the APR land or the Agricultural Operation.
9. If approved:
 - a. The location of the Renewable Energy System will not interfere or lead to the likelihood of interference with the Agricultural Use; and,
 - b. The proposed Renewable Energy System must be sited to minimize impacts on productive agricultural land.
10. If the Renewable Energy System is to be installed on APR land with prime soils or soils of state significance to farming, the following conditions must apply:
 - a. Site preparation and disturbance of the existing soil conditions of the land must be kept to a minimum; and,
 - b. No topsoil may be removed unless appropriately stockpiled and replaced on the site.

IV. **DEFINITIONS:** As used throughout this Guideline, the words or phrases listed below shall have the following meanings:

Agricultural Operation: a farming business encompassing a single economic unit under the same ownership and control, from which is derived a commercial agricultural product.

Agricultural Use: the raising of animals, including but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market, as defined in General Laws, Chapter 61A, Chapter 1, as amended. Also horticultural uses, the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily, directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market, as defined in General Laws, Chapter 61A, Chapter 2, as amended.

Agricultural Preservation Restriction ("APR"): a perpetual restriction to retain land or water areas predominately in their agricultural farming or forest use by forbidding or limiting certain property development rights.

APR Grantor: the party, parties, entity or entities that executed the APR.

Applicant: the record title owner of the APR who applies for a COA.

Certificate of Approval ("COA"): a certificate in recordable form issued by the Department that allows certain limited activities and uses for agricultural purposes on the APR with or without conditions.

Department: the Department of Agricultural Resources of the Commonwealth of Massachusetts, 251 Causeway Street, Suite 500, Boston, MA 02114-2151.

De-commissioning Plan: a clear plan with contingencies, developed at or before the time of installation, for the de-commissioning of the Renewable Energy System. The plan must account for removing the components of the Renewable Energy System and any related infrastructure and returning the Premises to its original condition as closely as possible.

Owner: the record title owner of the Premises.

Premises: the acres of land and buildings and structures thereon described in the Exhibit A attached to and incorporated into the APR.

Renewable Energy System: Renewable Energy System – any renewable or alternative renewable energy generating source and all its associated infrastructure, including but not limited to any energy storage, that meets the requirements of M.G.L. c. 25A, §§11F and 11F1/2 as recently amended by Chapter 251 of the Acts of 2014. Systems which use agricultural resources such as biomass as inputs are considered under a separate policy for Agricultural Biomass Energy Systems

Adopted _____, 2018

John Lebeaux
Commissioner